IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 967 OF 2007
WITH
CRIMINAL WRIT PETITION NO. 968 OF 2007
WITH
CRIMINAL WRIT PETITION NO. 969 OF 2007

Shri Changdev Rambhau Ghumare ..Petitioner

Vs.

Shri Vijay Rajaram Vidhate and anr. ..Respondents

Mr. Prakash Naik i/by Mr. T.N. Sonawane for petitioner.

Ms. Deepa Malwankar h/f Mr. J.N. Pawar for respondent no.1.

Mr. S.R. Shinde, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : August 22, 2007.

P.C.:

1. Heard Mr. Naik the learned counsel for the petitioner and Ms. Malwankar h/f Mr. Pawar the learned counsel for the respondent no.1. The learned APP appears for the respondent no.2-State.

2. As these three petitions raise a common

grievance, namely, rejection of an application filed for additional evidence under Section 391 of Cr.P.C. by the Lower Appellate Court, hence they are being decided by a common order.

3. The petitioner was impleaded as an accused in three different Summary Criminal Cases i.e. S.C.C. Nos.1459/02, 2930/02 and 5217/02 for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and he has been convicted and sentenced by the trial court in all the three complaints by a common judgment dated 20/4/2005. The order of conviction and sentence passed in each of the complaints has been challenged by filing three different criminal appeals i.e. Criminal Appeal Nos.43, 44 and 45 of 2005 and the appeals are presently pending before the learned Addl. Sessions Judge at Nasik. By a common order passed today, another batch of Criminal Writ Petitions has been disposed off by directing the Lower Appellate Court to hear and decide the said pending appeals by 31st October, 2007.

4. In the pending appeals, the

petitioner-appellant filed an application at Exh.18 for producing additional evidence of the original land owners i.e. Shri Pandit Gangadhar Badade and Shri Bhagwan Malhari Lilke. The appellant contended in the said application that there was no transaction between the complainant and the owners of the land which he had purchased in the year 2004 and there was no legally enforceable debt or liability against which the dishonoured cheques were issued by him and drawn in favour of the complainant. Said application was opposed by the complainant on the ground that the application was filed with an intention to protract the litigation and delay the final hearing of the appeals. It was further pointed out that applications after applications were filed to avoid payments and the appellant was deliberately causing delay in the final hearing of the appeals.

5. The Lower Appellate Court noted that the complainant had clearly stated that he had acted as a broker between the accused and the landlords. The land owners had approached him either to purchase the land or to arrange for its sale to third party. It was further pointed out in the said complaint that the

appellant had approached the complainant showing his intention to purchase the land and had entered into an agreement with him assuring payment of commission/Najarana. The trial court has held that the complainant proved the existence of legally enforceable debt/liability against which the dishonoured cheques were issued. It would be, therefore, irrelevant to record the evidence of the original land owners and in any case the appellant failed to explain as to why he did not take appropriate steps to examine the land owners before the trial court.

6. As noted earlier, by a common order passed today in Criminal Writ Petition Nos.955, 956 and 957 of 2007, the pending appeals have been directed to be heard and decided on their own merits by 31st October, 2007 and in any case the view taken by the Lower Appellate Court in rejecting the application at Exh.18 by the impugned order cannot be termed as perverse or patently erroneous and, therefore, there is no case made out to cause interference in the impugned orders under Article 227 of the Constitution, more so when the subject cheque amount was on account of the transaction between the complainant and the accused only.

7. Hence, the petitions are rejected summarily.

Ad-interim relief granted earlier stands vacated.

(B.H. Marlapalle,J.)